

CHAPEL TOWNHOMES, LLC

Petitioner

*

*

*

BEFORE THE ZONING BOARD

OF HOWARD COUNTY

Zoning Board Case No. 1099M

*

*

*

*

*

*

*

*

*

*

*

*

*

*

DECISION AND ORDER

On July 10, 2012, the Zoning Board of Howard County, Maryland ("Board") considered the petition of Chapel Townhomes, LLC ("Petitioner") to amend the Zoning Map of Howard County to reclassify from the B-1 (Business: Local) Zoning District to the R-A-15 (Residential: Apartments) Zoning District, 32,549 square feet of land located on the north side of Richards Valley Road approximately 350 feet east of MD 108, described as Tax Map 37, Grid 1, Parcel 4, Parcel B, 5733 Richards Valley Road (the "Property"). Petitioner also seeks approval of a documented site plan pursuant to Section 100.G.2.d. of the Howard County Zoning Regulations.

The notice of hearing was advertised, the Property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising, and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedure, all reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning ("DPZ") and the Planning Board's Recommendation were entered or incorporated into the record of the hearing. Both DPZ and the Planning Board recommended approval of the petition.

Petitioner was represented by Sang Oh, Esquire. Eileen Powers, Esquire, Zoning Counsel, appeared pursuant to Section 16.1000 of the Howard County Code to support the

comprehensive zoning of the Property. No residents appeared in opposition to the proposed rezoning.

After careful evaluation of the evidence, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Prior to the 2004 Comprehensive Zoning, the Property was part of a 75-acre farm property. The farm property was zoned R-20 (Residential: Single District) and MXD-3 (Mixed Use), an Overlay District that permits a combination of housing, employment, local commercial, and open space uses in accordance with a Preliminary Development Plan approved by the Zoning Board in accordance with Section 127 of the Zoning Regulations.

2. In the 2004 Comprehensive Zoning, Deep Run Property Management, LLC ("Deep Run"), the farm property owner, asked the County Council to rezone the farm property. In its Zoning District Map Amendment Request (Petitioner's Exhibit 1), Deep Run explained that it had "selected a development team to purchase and develop the [farm] property in accordance with a carefully designed plan that preserves a small farm area as open space and provides for a mix of residences, basic retail services and office uses fronting on Route 100." Deep Run requested, among other things, that 4.8 acres of the farm property be rezoned B-1 (Business-Local). Deep Run specified that 0.9 acres of B-1 property – the Property that is the subject of the current Petition – would be used for a religious chapel in the event the Board granted Deep Run's request. The Zoning Board rezoned the Property B-1.

3. John Slidell, a representative of Petitioner, testified in support of the proposed rezoning. According to Mr. Slidell, Chapel Townhomes is a subsidiary of Bozzutto Homes, which purchased the farm property from Deep Run and developed it as the Shipley's Grant

community. The Curtis Family, who were prior, long-standing owners of the farm property, controlled Deep Run. Mr. Slidell stated that the agreement between Deep Run and Bozzutto Homes was unusual in that Deep Run required Bozzutto to commit to a preliminary plan for development of the farm property and sign a Declaration of Covenants specifying architectural requirements for construction. Usually, the developer alone determines plans and architecture. According to Mr. Slidell, the Curtis Family wanted to ensure a quality development. The Declaration of Covenants, which also provided for construction of a chapel on the Property, was filed one month prior to the 2004 Comprehensive Zoning. The request to construct a chapel on the Property originated with Mrs. Curtis. The Property was deeded to Church of the Good Shepherd (the "Church"), of which Mrs. Curtis was a member. Mr. Slidell stated that the Declaration of Covenants required the Church to submit plans for chapel development to Bozzuto for approval to ensure consistency with the architectural guidelines.

According to Mr. Slidell, no religious facility was ever constructed on the Property. After approaching Bozzuto Homes with numerous plans for construction, all of which were infeasible, the Church asked Petitioner to purchase the Property. Deep Run and Bozzuto have executed an amendment to the Declaration of Covenants, which is being held in escrow pending a successful rezoning.

Mr. Slidell stated that Petitioner submitted site plan documentation because it is very concerned about development of the Property. The Property sits at the "front door" of the Shipley's Grant community, and is currently a vacant lot. According to Mr. Slidell, additional retail is not an appropriate use of the Property.

4. Mr. Ron Johnston, a registered architect, testified on behalf of Petitioner. Mr. Johnston stated that the Property is too small to support a religious facility. The Property is

significantly smaller than other religious facilities in the area. Mr. Johnston stated that he recommends that religious facilities have at least 1 acre per every 80 people on "campus" in order to provide green space and meet stormwater management requirements. Mr. Johnston testified that in order to be self-supporting, a religious facility should have at least five acres and that, in no case, could he recommend any less than three acres for a viable self-sustaining church.

5. Mr. Carl Gutschick, a civil engineer, testified that, in his opinion, the Property was mistakenly zoned B-1 in the 2004 Comprehensive Zoning. Mr. Gutschick stated that the Property is too small to build a building and provide parking. Mr. Gutschick agreed with the determination by DPZ in the Technical Staff Report that the Property is not suitable for other B-1 uses. The Property does not share the common parking area with the retail center; nor is the Property readily visible from Route 108. Mr. Gutschick testified that he believes the Property should be R-A-15, like the surrounding residential areas.

Mr. Gutschick stated that the townhomes represented on the documented site plan will continue in the same pattern as the existing homes. He stated that there will be safe road access and that the documented site plan is compatible with the General Plan, which calls for residential uses in the area. According to Mr. Gutschick, moderate price units will also be provided.

Mr. Gutschick stated that he was hired by the Church to assist them in constructing a religious facility on the site, but that after many months of looking at the site and every possible scenario, the Church decided not to proceed. According to Mr. Gutschick, the Church realized that using the Property for a religious facility was not feasible and called off the project.

6. Mr. Tom Baum, President of Bozzuto Homes, testified about his meeting with approximately a dozen residents of Shipley's Grant regarding the proposed rezoning. According

to Mr. Baum, the residents all spoke in favor of additional townhomes and against business uses for the Property.

7. Reverend Jon Jackson testified as a representative of the Church. Reverend Jackson stated that the Curtis Family never consulted with the Church regarding the configuration, size, or location of the Property. According to Reverend Jackson, the Church determined after much examination that the Property is too small to support its congregation. Reverend Jackson indicated that the Church has discussed the sale with the Curtis Family, who realize that the Church did everything possible to accommodate their mother's wishes. The Church has found a 6 ½ acre property to purchase and intends to use the proceeds from the sale of the Property to finance its acquisition.

8. The Board is persuaded that the evidence amply demonstrates that, during the 2004 Comprehensive Zoning, the County Council rezoned the Property B-1 based upon the mistaken assumption that the Property was large enough to be developed and, indeed, would be developed as a religious facility. Despite diligent efforts over the course of the last eight years, the Church has been unable to develop the Property to meet its own needs or the needs of any other religious organization in the area. As Mr. Johnston testified, the Property is significantly smaller than nearby religious facilities. In order to be viable and self-supporting, a religious organization must be able to construct a facility large enough to support a sizeable congregation. Although Mrs. Curtis genuinely wanted the Church to use the Property as a chapel, she never asked the Church if the Property was large enough to support a religious facility. Indeed, the fact that the Property has remained undeveloped for the past eight years is further evidence that it is unsuitable for development as a chapel. Accordingly, Petitioner has presented strong evidence

of mistake overcoming the presumption of validity accorded to the B-1 zoning of the Property in the 2004 Comprehensive Rezoning.

9. Having found that Petitioner has adequately demonstrated mistake during the 2004 Comprehensive Zoning, the Board finds that R-A-15 is the most appropriate zoning classification for the Property. The Property does not share parking with the adjoining retail center and is not visible from Route 108, making the Property ill-suited for commercial development. R-A-15 zoning of the Property is consistent with the use of neighboring residential properties.

10. Section 100.G.2.d requires the Zoning Board to consider the following factors in reviewing Petitioner's documented site plan:

- a. The compatibility of the proposed development with the existing and potential land uses of the surrounding areas;
- b. Protection of the environmental integrity of the subject property and adjoining areas in the location and design of the site improvements;
- c. The availability of safe road access for the proposed development; and
- d. Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.

The Board finds that Petitioner's documented site plan satisfies all of the aforementioned standards for approval. Specifically, the Board finds that the construction of additional townhomes, as depicted on the documented site plan, will be compatible with the adjoining townhome development. The Property is a vacant lot and does not require protection of any special environmental features. Homes built on the Property will have safe road access via Richards Valley Road and interior alleyways. Finally, the development will be compatible with

the policies and objectives of the General Plan by providing residential uses in the area as well as the required affordable housing units.

CONCLUSIONS OF LAW

1. Petitioner, as one seeking a piecemeal zoning reclassification, has the burden of demonstrating mistake in the last comprehensive zoning of the Property or change in the character of the neighborhood of the Property since the last comprehensive zoning. If this burden is met, the Board is permitted, but not compelled to grant the rezoning request.

2. Petitioner relied on alleged mistake in the 2004 Comprehensive Zoning as its justification for rezoning in this case.

3. There is sufficient evidence in the record demonstrating mistake in the 2004 Comprehensive Zoning of the Property to the B-1 District, as identified in the Technical Staff Report of DPZ and the Board's Findings of Fact, to overcome the strong presumption of correctness attached to that comprehensive zoning.

4. Petitioner has met the onerous burden of proving strong evidence of mistake in the 2004 Comprehensive Zoning of the Property sufficient enough to permit the requested rezoning of the property R-A-15, as provided in the Board's Findings of Fact.

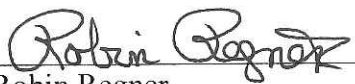
5. Petitioner has presented sufficient evidence for the Board to conclude that the appropriate zoning category for the Property is the R-A-15 Zoning District as set forth in the Board's Findings of Fact. Accordingly, the Board concludes that R-A-15 is the most appropriate zoning for the Property.

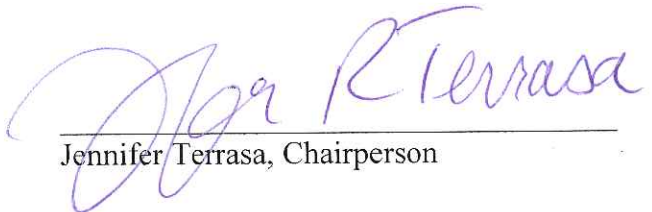
6. The Board concludes that Petitioner's documented site plan satisfies all of the criteria set forth in Section 100.G.2.d of the Zoning Regulations. The Board, therefore, approves Petitioner's documented site plan.

For the foregoing reasons, the Zoning Board of Howard County, on this 24th day of September, 2012, hereby GRANTS Petitioner's request for rezoning of the Property from the B-1 to the R-A-15 Zoning District and GRANTS approval of Petitioner's documented site plan.


ATTEST:

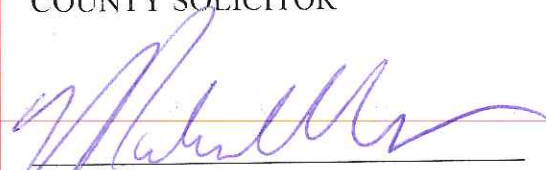
ZONING BOARD OF HOWARD COUNTY

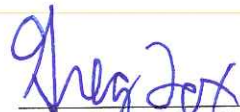

Robin Regner
Administrative Assistant


Jennifer Terrasa, Chairperson

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Calvin Ball, Vice Chairperson


Melissa Whipkey
Assistant County Solicitor


Greg Fox, Member


Mary Kay Sigaty, Member

Did Not Participate
Courtney Watson, Member